Beverly Health and Rehabilitation Services, Inc. d/b/a Beverly Manor Health Care Center *and* Hospital and Service Employees Union, Local 399, SEIU, AFL–CIO. Case 31–CA–21619

January 22, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Upon a charge filed October 24, 1995, by Hospital and Service Employees Union, Local 399, SEIU, AFL–CIO (the Union or the Charging Party), the Regional Director for Region 31 issued a complaint against Beverly Health and Rehabilitation Services, Inc. d/b/a Beverly Manor Health Care Center (the Respondent), alleging that the Respondent engaged in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the complaint and notice of hearing were served on the Respondent and the Charging Party. The Respondent filed a timely answer denying the commission of any unfair labor practices.

On March 4, 1996, on the basis of an all-party stipulation, the parties filed with the Board a motion to transfer the instant proceeding to the Board without a hearing before an administrative law judge and submitted a proposed record consisting of the formal papers and parties' stipulation of facts, with attached exhibits. On June 26, 1996, the Executive Secretary of the Board issued an Order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel, the Charging Party, and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the stipulation, the briefs, and the entire record of this proceeding, and makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a California corporation with an office and place of business in Burbank, California, where it provides nursing and rehabilitative services. The Respondent annually derives gross revenues in excess of $500,000, and annually purchases and receives goods or services valued in excess of $50,000 directly from sellers or suppliers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

322 NLRB No. 162

II. ALLEGED UNFAIR LABOR PRACTICES

The issue is whether the Respondent violated Section 8(a)(5) and (1) of the Act by ceasing its recognition of the Union on September 27, 1995.

A. *Facts*

In 1985, at the conclusion of Case 31–RC–5611, the Respondent recognized the Union as the exclusive bargaining representative of its employees in an appropriate unit. The parties entered into successive collective-bargaining agreements beginning in 1985. The most recent contract was effective June 1, 1992, through May 31, 1994. On June 1, 1994, the contract automatically renewed for 1 year. After the renewal period expired, the parties executed four separate letters of agreement extending the terms of the contract from June 1, 1995, through September 29, 1995, while the parties bargained for a new contract. The parties did not reach agreement and the contract expired on September 29, 1995.

During the parties' bargaining relationship, a second certification of representative issued in favor of the Union on April 19, 1990, in Case 31–RD–1178, and a third certification of representative issued in favor of the Union on December 19, 1994, in Case 31–RD–1293.

On September 26, 1995, the Respondent was presented with an employee petition disavowing union representation. On the same date a decertification petition was filed in Case 31–RD–1325.

The Respondent withdrew recognition of the Union on September 27, 1995. On October 20, 1995, the Regional Director dismissed the petition in Case 31–RD–1325 because it was filed during the certification year beginning December 19, 1994.

B. *The Parties' Contentions*

The General Counsel and the Charging Party, relying on *Americare-New Lexington Health Care Center*, 316 NLRB 1226 (1995), maintain that the Respondent's withdrawal of recognition during the certification year beginning December 19, 1994, is unlawful. The Respondent argues that the certification year rule should be limited to a union's initial certification of representative.

C. *Analysis*

In *Americare-New Lexington* the Board held that a union was entitled to an irrebuttable presumption of continuing majority status for 1 year after it received a certification of representative based on the results of a decertification election, even though the union had previously been certified based on an initial representa-

tion election.[1] The Board, supra at 1226, "affirm[ed its] longstanding practice of applying the certification year rule in every instance in which the Board certifies a union after a representation election."

Americare-New Lexington, supra at 1226 fn. 3, addressed the Respondent's argument that the certification year rule should apply only to a newly established bargaining relationship. The Board explained that the concerns favoring the certification year rule expressed in *Brooks v. NLRB*, 348 U.S. 96 (1954), and *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), apply to the period after any election resulting in a certification of representative.

Thus, we have already considered, and rejected, the Respondent's argument that a union should enjoy the benefits of the certification year rule only once after the initial representation proceeding in which the union was certified. As we explained in *Americare-New Lexington*, supra at 1226:

> Although the [certification year] rule arose in the context of initial representation election campaigns, there is no basis in policy or precedent for limiting it to that context . . . [D]ecertification elections can be more disruptive than initial campaigns to the collective-bargaining relationship. There is at least as great a need for a guaranteed postelection insular period in which the bargaining relationship can stabilize and succeed.

In other words, whether a union has received a certification of representative after an initial representation election, a second certification of representative after a decertification election as in *Americare-New Lexington*, or a third certification of representative as here, the certification year rule applies.

We find that the Respondent violated Section 8(a)(5) when it ceased recognizing the Union on September 27, 1995, at a time when the Union was entitled to an irrebuttable presumption of continuing majority status.

CONCLUSION OF LAW

By refusing to recognize the Union since September 27, 1995, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

[1] The Respondent argues that an informal Board-settlement agreement was at issue in *Americare-New Lexington*. It is true that after the second certification of representative, the respondent ceased recognizing the union after 1 bargaining session and later informally settled the charge the union filed. That fact, however, played no role in the Board's reasoning regarding the applicability of the certification year rule.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In accord with *Colfor, Inc.*, 282 NLRB 1173 (1987), enfd. 838 F.2d 164 (6th Cir. 1988), in which we discussed what is necessary to remedy the effects of a respondent's disruption of negotiations, we shall require the Respondent to recognize and, on request, bargain with the Union as the exclusive representative of its employees in the appropriate unit for at least 6 months from the date it resumes bargaining as if the initial certification year had not expired.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Beverly Health and Rehabilitation Services, Inc. d/b/a Beverly Manor Health Care Center, Burbank, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize Hospital and Service Employees Union, Local 399, SEIU, AFL–CIO as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time nurses' aides, non-supervisory licensed vocational nurses, laundry employees, housekeeping employees, dietary employees, medical records clerks and activities assistants employed at the Respondent's facility at 925 West Alameda Avenue, Burbank, California, excluding all registered nurses, personnel clerks, social service designees, business office clerical employees, maintenance employees, professional

[2] During the 6 months the Union shall enjoy an irrebuttable presumption of continuing majority status. Of course, we do not mean to suggest that the Respondent's bargaining obligation ceases at the end of the 6 months.

The Charging Party requests the following additional remedies: a 12-month extension of the certification year, a broad cease-and-desist order, access rights including employee names and addresses, rescission of unilateral changes in employee terms and conditions of employment, reimbursement of attorneys' fees, and the reading and translation of the notice.

With respect to the request for attorneys' fees, we deny it as lacking in merit on the ground that the Respondent's position in this proceeding was not frivolous within the meaning of *Frontier Hotel & Casino*, 318 NLRB 857 (1995).

With respect to the other items, we find that the bare record in this case, consisting essentially of the parties' stipulation of facts, does not provide an adequate foundation to support the remedies sought. See *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 900 (1984) (Board remedies are to be tailored "to the situation which calls for redress.") The Charging Party may be able to secure some of the relief it seeks by filing a new unfair labor practice charge; nothing in our decision today is intended to foreclose the Charging Party from pursuing that course or to predict its result.

employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment for at least 6 months from the date it resumes bargaining with the Union as if the initial year of certification had not expired, and embody any understanding reached in a written agreement.

(b) Within 14 days after service by the Region, post at its Burbank, California facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 24, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize Hospital and Service Employees Union, Local 399, SEIU, AFL–CIO as the exclusive bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time nurses' aides, non-supervisory licensed vocational nurses, laundry employees, housekeeping employees, dietary employees, medical records clerks and activities assistants employed at our facility at 925 West Alameda Avenue, Burbank, California, excluding all registered nurses, personnel clerks, social service designees, business office clerical employees, maintenance employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and embody any understanding reached in a written agreement.

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. D/B/A BEVERLY MANOR HEALTH CARE CENTER